

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 5:11CR594
)	
Plaintiff,)	JUDGE DAN A. POLSTER
)	
v.)	<u>GOVERNMENTS RESPONSE IN</u>
)	<u>OPPOSITION TO DEFENDANT’S</u>
SAMUEL MULLET, SR.,)	<u>“MOTION TO RECONSIDER ORDER</u>
)	<u>DENYING MOTION TO REVOKE</u>
)	<u>DETENTION ORDER”</u>
Defendant.)	

Now comes the United States of America, by and through counsel, Steven M. Dettelbach, United States Attorney, and Assistant U.S. Attorneys Bridget M. Brennan and Thomas E. Getz, and Department of Justice Trial Attorney Kristy L. Parker, and respectfully opposes defendant Samuel Mullet, Sr.’s “Motion to Reconsider” and further requests the Court to revisit the issue of the defendant’s legal representation, for the reasons set forth in the attached memorandum.

Respectfully submitted,

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MEMORANDUM

I. INTRODUCTION

This Court has previously determined that the defendant herein, Samuel Mullet, Sr., represents a risk of flight and a risk of danger to the community if released that cannot be satisfactorily mitigated by any available less-restrictive means of control. In making its determination, the Court was able to review and consider substantial information presented during a lengthy hearing before the Magistrate Judge, the recommendations made by the Magistrate Judge and Pretrial Services, and supplemental information provided during the most recent court proceedings. The Court's previous denial of the defendant's motion for reconsideration of the detention order is currently under appeal to the Sixth Circuit Court of Appeals. The defendant now avers that "new circumstances" support another reconsideration of this Court's order of detention—those alleged circumstances, which, as explained herein below, are not at all "new," being the defendant's confirmation that he does possess over \$2 million in income from executed energy leases relative to the 800 acres he owns in Jefferson County, Ohio.

The order of detention entered in this case should not be revoked. Samuel Mullet, Sr., is primarily and ultimately responsible for the series of unprovoked home invasions and violent attacks that are the subject of the serious charges in this case. Additional charges include obstruction of evidence and making false statements to the FBI. As demonstrated by evidence presented at the detention hearing, the defendant also has a history of defying court orders and making threats. There are no conditions of release available to counter or neutralize the risks attendant to his release from detention pending the trial of this case.

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II. BACKGROUND

On Wednesday, November 30, 2011, following his indictment in this case, the defendant was present for a consolidated preliminary hearing and detention hearing before the Honorable George J. Limbert, U.S. Magistrate Judge; the defendant was represented by Assistant Federal Public Defender Edward G. Bryan. During that hearing the government objected to the appointment of counsel and presented evidence, through the testimony of FBI Special Agent Michael Sirohman, that the defendant, Samuel Mullet, Sr., was not indigent but, in fact, had access to substantial funds. SA Sirohman testified first regarding statements the defendant made during a recorded jail call with co-defendant Lester Mullet who was incarcerated at the time on then-pending state criminal charges:

Transcript, p. 21, lines 11-25 through p. 22, lines 1-2

- 11 **Q.** During this phone conversation, is there a conversation
12 or a reference to a gas man?
- 13 **A.** Yeah, there are several references to a gas man and how
14 it relates to paying bond and other items.
- 15 **Q.** What do you understand the role of this gas man that
16 they are talking about, what do you understand his role to
17 be?
- 18 **A.** It is my understanding that there are leases signed
19 between a gas company and – for property owned by Sam
20 Mullet, and the gas company is advancing money to Sam
21 Mullet, Sr., as it is needed or requested.

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22 **Q.** And what is -- for what purpose is -- what is Sam

23 Mullet using these advances for?

24 **A.** We know -- we believe he used those advances to bond

25 out the five individuals from Holmes County on the state

1 charges, as well as fund accounts that they had in the

2 jails.

The substance of this conversation was further corroborated by evidence viewed during the execution of a search warrant at the defendant's home, as described by SA Sirohman:

Transcript, p. 22 lines 3-15

3 **Q.** In connection with the execution of the search warrant

4 at Sam Mullet's house on November 23rd, did any agents see

5 any documents relating to a lease contract with a gas

6 company?

7 **A.** Yes, they were seen. There was gas and oil leases

8 seen at that residence.

9 **Q.** And they were not seized, correct?

10 **A.** Correct, they were not.

11 **Q.** But they were viewed by the agents?

12 **A.** They witnessed them, yes.

13 **Q.** All right. Did these lease contracts appear to be

14 executed?

15 **A.** Yes, they appeared to be executed.

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Later, following closing arguments, the Court specifically inquired about the defendant's income from the gas leases; at that time, defendant's counsel seemed reticent to even confirm the existence of any such agreements:

Transcript, p. 187, lines 18-25 through p. 188, lines 1-13

18 THE COURT: Are you talking about cash bail?

19 MR. BRYAN: Well, whatever condition your Honor

20 deems is sufficient. But he does have 800 acres, and he is

21 more than prepared to put that up, along with, I guess

22 they're talking about his mineral rights and all that kind

23 of stuff, whether or not they exist.

24 THE COURT: How much is he getting under his gas

25 lease?

1 MR. BRYAN: He hasn't --

2 THE COURT: He can draw money whenever he wants to

3 under it?

4 MR. BRYAN: He denies what was stated to in

5 testimony. He hasn't received an advance at all. He is

6 expecting, sometime in the future, in the near future,

7 hopefully to receive the first payment on that lease. But

8 he's going to receive payments if --

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9 THE COURT: Because normally they pay money when
10 you sign a lease.

11 MR BRYAN: I don't know, Your Honor. It's my
12 understanding that he hasn't received anything until his
13 first payment, which hasn't arrived yet.

It should be noted that Cleveland Attorney Roger Synenberg was present in court, in Youngstown, for the entirety of those proceedings, and was prepared to be retained by defendant Samuel Mullet, Sr. Attorney Bryan acknowledged this in his January 9, 2012, letter to this Court, in which he wrote:

At the initial appearance, Mr. Mullet sought the magistrate judge to appoint our office to represent him. The government objected to the appointment on the basis that Mr. Mullet appeared not to be indigent. . . .

The government's objection to Mr. Mullet receiving appointed counsel seems to be based upon its belief that Mr. Mullet will receive money in the future from a potential oil and gas lease that has been negotiated for his property. . . . Mr. Mullet indicates that until the money is in his hands, he does not have sufficient funds to retain a private lawyer. (Emphasis added).

Attorney Bryan, while still evading any confirmation of executed leases or anticipated funds, then suggests in the letter: "Counsel submits that an order could be entered that requires Mr. Mullet to reimburse the Court for the Federal Public Defender's representation if he does in fact receive proceeds from a mineral rights lease in the future[.]" (Emphasis added).

The Public Defender's office thus paved the way for this prospective multi-millionaire to receive the substantial benefits of legal representation at the discounted rate paid to appointed counsel for truly indigent defendants. Mr. Bryan then acknowledged: "Mr. Synenberg has met with Mr.

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Mullet, and has expressed a willingness to represent Mr. Mullet if the Court finds Mr. Mullet not to be indigent.”

-- Excerpts from letter to the Honorable Dan A. Polster, from Edward G. Bryan, Assistant Federal Public Defender, dated January 9, 2012. (Emphasis added).

Three days later, on January 12, 2012, the defendant appeared, with his appointed counsel, before this Court. At that hearing, the Court directed the U.S. Probation Office to undertake a financial investigation of Mr. Mullet to determine his net worth and monthly cash flow. The U.S. Probation Office reported to the Court that on the following day, January 13, it made specific requests for financial information from the defendant through Attorney Bryan, setting a January 27, 2012 deadline. On January 30, the Supervising U.S. Probation Officer reportedly spoke with Attorney Bryan regarding the requested financial information, which had not been provided. Attorney Bryan reportedly admitted that land lease agreements had been executed with oil and/or gas companies, and that “within the next few weeks...the defendant will receive a substantial amount of money.” In addition, Attorney Bryan agreed to update the Probation Office “as soon as this information becomes available.”

Over a month later, on March 5, 2012, Attorney Bryan once again assured the Probation Office that “once Mr. Mullet receives his funds, [Bryan] will let [the Probation Officer] and the Judge know.” Meanwhile, requested financial information had not yet been provided by the defendant.

On March 9, 2012, the government received credible information that the defendant’s wife had offered to pay \$60,000 in cash to one of the defendant’s children, a potential trial

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witness, allegedly to satisfy the mortgage on the child's home.¹ Upon receiving this information, the Supervising U.S. Probation Officer, who still had not received the requested financial information or any promised update from the defendant or his counsel, sought further direction from the Court as to whether the financial investigation should resume. The Probation Officer had ceased pressing for the requested financial documentation after Attorney Bryan advised him that the investigation would not be necessary because the defendant was now anticipating receipt of a substantial amount of money from his land lease agreements, "making any assets he has now not worth noting." Nonetheless, the Court advised the Supervising U.S. Probation Officer to resume the investigation of the defendant's finances.

On March 12, 2012, the Supervising U.S. Probation Officer again directed Attorney Bryan to furnish specific financial information by March 21, including information on any financial payments from any land lease deals, received or expected. That morning, Attorney Bryan responded by electronic mail, as follows:

I learned late last week that the checks from the lease were given to the Mullets and that they were deposited in their bank on Thursday. The bank placed a hold on the checks (believed to be for about a week) to make sure the checks cleared. In anticipation of receiving these funds, Mrs. Mullet [the defendant's wife] offered to some of their children that they would pay the mortgages on their homes. At the time she made this offer, she did not have 60 thousand dollars cash available. (Emphasis added).

Attorney Bryan also noted that the proceeds amounted to more than \$2 million, after taxes. Attorney Bryan then suggested to the Probation Officer that the court-ordered financial

¹ While defendant's child obtained a mortgage to construct/purchase the home, it is understood that the defendant retained ownership of the land on which the home is situated.

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investigation of the defendant was “no longer necessary.” Consequently, the financial investigation of the defendant requested by this Court was never accomplished.

In the defendant’s most recent motion seeking release on bond, Attorney Bryan now contends that “[o]n March 7, 2012, Mr. Mullet received significant proceeds from an oil and gas lease to his 800-acre farm in Bergholz, Ohio. . . . Mr. Mullet is now in a position to provide a significant cash bond to secure his potential release.”² (Emphasis added).

Yet, as late as March 12, the Probation Office had still not been apprised of these funds, as requested and as had been promised.

In summary, this multi-millionaire defendant has managed to obtain legal representation and the necessary attendant resources from the Federal Public Defender’s Office at the less-than-market rate of \$125 per hour, subsidized by federal tax dollars, by being less than forthcoming about his true financial condition, evading a Court-ordered financial investigation by the U.S. Probation Department, and delaying notification of the receipt of substantial funds, after first shrewdly avoiding confirmation that such funds were even anticipated or that any leases had been executed. Those funds should now be applied toward a retainer for private legal representation rather than to secure his release and/or make questionable cash payments to family members.

III. RISKS OF FLIGHT/DANGER TO THE COMMUNITY/OBSTRUCTION

As noted above, upon receipt of the funds, but prior to advising the Court of same, the defendant’s wife offered substantial cash payments to potential witnesses in the pending case. The defendant now has the temerity to claim that the receipt of these millions, first brought to the

² While offering to make substantial cash payments to at least one of his children from these funds, the defendant has not suggested the use of these assets to secure the release of any of his other children or family members who are also detained as co-defendants in this case.

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Court's attention by the government as far back as November 2011, represents a "new circumstance" creating an opportunity for this Court to re-examine its order of pre-trial detention.

If anything, the defendant's admitted access to these substantial funds increases the risks relative to his release pending trial, rather than diminishes them. As the government has consistently pointed out in response to all of the defendant's previous motions seeking his release, Samuel Mullet, Sr., faces substantial penalties upon conviction for the charged offenses. By his own admission, Mullet exerts tremendous authority over the members of his Bergholz community, many of whom are co-defendants in this case. His influence is not limited to the spiritual; he maintains emotional, psychological and financial leverage over them, as well. It is not coincidental that the attacks on leaders and members of surrounding Amish communities ceased upon the defendant's arrest and detention. Clearly, the members of those communities feel safer because the defendant is detained. [See, unsolicited letters from community, attached as *Motion Exhibits 1-4*].³

Furthermore, not only does this untimely acknowledgment that he has more than \$2 million dollars at his disposal greatly increase the possibilities, options, and even the temptation of flight for this defendant, more significantly, the government's greatest concern remains the defendant's ability, upon release, to retreat into his 800-acre spread, surrounded by his family members and devoted followers, some of whom are also co-defendants and at least one of whom is residing in his house, and resist law enforcement efforts to ensure his appearance at trial. The evidence has demonstrated that this defendant and his followers have not embraced the

³ The identities of the authors of these letters have been redacted from the attached copies for their protection and to ease concerns of retaliation. Unredacted copies can be made available under seal at the Court's request.

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traditional Amish principles on non-violence and forgiveness. The possibility of a violent encounter, this time with law enforcement, should not be readily dismissed.

Accordingly, no amount of bond is sufficient to protect others from this defendant's capacity for aggression.

IV. CONCLUSION

As the record shows, the United States objected to the appointment of the Federal Public Defender's Office to provide representation to this defendant from the inception of this case. That opposition was based on the evidence presented at the preliminary and detention hearing regarding his income from executed gas and/or oil leases, about which the defendant was less than forthright. The defendant's recent self-serving "revelation" that he has cleared, post-tax, an amount greater than \$2 million and now owns his 800-acre farm free and clear, while not a "new circumstance" as claimed, supports the government's position.

Accordingly, the United States respectfully requests that the Court deny the defendant's motion for reconsideration, and further, that the Court reconsider its previous Order of March 21, 2012, with respect to the defendant's legal representation, in the following respects:

1. The government requests, especially now that the defendant has averred to it in his motion, that the United States be furnished any and all materials, information and communications made available to the Court by the defense relative to this matter;

2. The United States requests, in that the defense has requested and received a continuance until August 27, 2012, for the trial in this case, that the defendant be required to obtain private counsel (as noted, at least one private attorney had been approached earlier and had attended the preliminary and detention hearing proceedings); and

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3. The United States requests that, in order that the public not inadvertently subsidize the defense of a multi-millionaire, the defendant be required to pay a suitable market rate, (well in excess of the reimbursement amount for the CJA attorneys for their representation of indigent defendants), for all time spent on this matter to date, and that the Federal Public Defender be required to accurately bill for all such time and resources expended.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2012, a copy of the foregoing Government's Response in Opposition to Defendant's "Motion to Reconsider Order Denying Motion to Revoke Detention Order" was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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